IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-9-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.46234 of 2006
and
MP Nos.1 of 2006 and 1 and 2 of 2007

The Management of Metropolitan
Transport Corporation
Pallavan Salai, Chennai 600 002,
(Formerly known The Management of
Metropolitan Transport Corporation
Chennai Division II, Ayanavaram
Chennai 23) .. Petitioner

vs

1.The Presiding Officer
I Additional Labour Court
Chennai
2.R.Chandra Mohan .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records in I.D.No.111/2000 on the file of the I Additional Labour Court, Chennai, and quash the order dated 27.2.2006.

For Petitioner : Mr.G.Muniratnam
For Respondents : Mr.S.Ravi for R2

ORDER

Challenge is made to an award of the I Additional Labour Court, Chennai, in I.D.No.111 of 2000 whereby an order of dismissal of service of the second respondent Driver attached to the Metropolitan Transport Corporation, Madras, was set aside.

2.The Court heard the learned Counsel on either side.

3.The short facts necessary for the disposal of this writ petition can be stated thus:

The second respondent joined the Tamil Nadu Transport Corporation as Driver in the year 1986. In 1989, he was given employment in the other Transport Corporation. He was again transferred to Pallavan Transport Corporation. When there was a bifurcation, he was transferred to the petitioner Corporation. Pursuant to an accident that took place, he was suspended on 16.10.1998. A charge memo was served upon him in respect of which he tendered his explanation. It was not found satisfactory by the

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management. Following a domestic enquiry, findings were recorded that the charges levelled against him, were proved. Then, the second show cause notice was issued to him. He tendered his explanation following which an order of termination was made. He challenged the same before the first respondent Labour Court. The Labour Court on enquiry, set aside the order of termination which is challenged by the Transport Corporation in this writ petition.

4.Advancing the arguments on behalf of the petitioner Transport Corporation, the learned Counsel would urge that it is not in controversy that an accident took place at about 8.30 A.M. on 14.10.1998 when the second respondent Driver was driving the vehicle from Anna Square towards Arumbakkam near Spurtank Road; that in the said accident, the bus dashed against a Kinetic Honda which came from the opposite direction overtaking a Car; that further, he has taken the bus towards the extreme right side of the Road and dashed against an Ambassador Car, an Auto and another Kinetic Honda, and thus, he has injured five persons and also damaged the properties; that there was a proper enquiry after the charges were levelled against him and the explanation was not found satisfactory; that the principles of natural justice were strictly adhered to; that the order of termination that was passed, was to be justified; but, the Labour Court has set it aside on the ground that as per the documentary evidence available, it would be quite evident that the second respondent did not drive the vehicle rashly and negligently, and hence, he was not responsible for the accident; that the said finding is not correct, but factually erroneous; that even the documentary evidence would clearly indicate that he was responsible for the accident, and after dashing the vehicle against a Kinetic Honda and causing severe injury on the person who drove that two wheeler, he took the vehicle to the extreme right and dashed against an Ambassador Car, an Auto and another Kinetic Honda and caused injuries to five persons; that under the circumstances, the non-examination of an independent witness will not in any way affect the charges; that a scrutiny of the documentary evidence would clearly reveal that he was responsible for the accident; that the Labour Court has failed to apply the doctrine of res ipsa lequitur; that the accident that has taken place, would speak for itself; that without applying the same, the Labour Court has taken a different view and set aside the order of termination, and hence, the writ petition has got to be ordered.

5.In answer to the above, it is contended by the learned Counsel for the second respondent that in the instant case, the Corporation has not examined one eyewitness; that even the Official of the management went to the spot at 9.00 A.M. when the accident has taken place at 8.30 A.M.; that even the documentary evidence and in particular, the rough sketch relied on by the management, would clearly indicate that the accident has taken place on the left side of the divider; that this would clearly indicate that the bus in question was driven by the second respondent on the correct side; that the person who was driving the Kinetic Honda, has come on the wrong side and dashed against the bus; that in order to save the situation, the second respondent had taken the bus to the right extreme; that in that course, the accident has taken place which was out of his

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control; that all the materials were thoroughly analyzed by the Labour Court; that the Labour Court has taken a correct decision, and hence, it has got to be sustained and the writ petition be dismissed.

6.The Court paid its anxious consideration on the submissions made.

7.It is not in controversy that an accident has taken place at about 8.30 A.M. near Spurtank Road when the second respondent was driving the vehicle belonging to the Corporation, from Anna Square to Arumbakkam. It is also not in controversy that in that accident, the bus dashed against the person who was driving a Kinetic Honda, and it also dashed against an Ambassador Car, an Auto and a Kinetic Honda. In the said accident, one died, and five persons were injured. It is also an admitted position that an Official of the department visited the spot at about 9.00 A.M. when the accident took place at about 8.30 A.M. Now, the non-examination of an eyewitness in a case like this and that too, in a domestic enquiry, cannot be said to be one which would go against the case of the management. The charge that was levelled against him, was that it was he who was responsible for the accident since he drove the vehicle rashly and negligently. In the instant case, no one eyewitness was examined; but, the Enquiry Officer relied on the documents that were produced, in order to record a finding that it was the second respondent who was responsible for the accident. The Labour Court has set it aside only on the ground that even the documents if scrutinized, would clearly reveal that it was the Scooterist who crossed the traffic edge of the road, came to the wrong side and hit against the bus, and the rough sketch drawn by the Investigator and marked as Ex.M2, would clearly establish that when the bus came along its right direction as per the traffic rules, the Scooterist came to the wrong side and hit against the front side portion of the bus, and then only, the bus moved to the right side of the road. True it is, when the rough sketch which was relied on by the management, was looked into, it would be quite clear that the accident has taken place on the left side of the divider.

8.Now, at this juncture, it is pertinent to point out that when such an accident has taken place, even assuming that the vehicle was coming in the opposite direction on the roadside, there was all possibility for him immediately stopping the vehicle; but, on the contrary what is found herein is that the bus at the time of inspection was found at the right extreme of the road, and thus, before it came to a halt, it dashed against an Ambassador Car, an Auto and another Kinetic Honda. It has caused not only damage to the properties, but also injury to five persons. In the instant case, the Labour Court has taken into consideration the accident which commenced. Now, the contentions put forth by the petitioner's Counsel have got to be seen. Though there is no direct evidence, this Court is of the considered opinion that it is a fit case where the doctrine of res ipsa lequitur has got to be applied. Even assuming that there was initial dash, he should have averted the later part of the accident by applying the brake, but not done so. It remains to be stated that three vehicles have been further dashed, and five persons were injured. The fact that he could not apply the brake and immediately stop the vehicle would indicate that the bus was driven by him rashly and negligently at the time when the accident has taken place. Once a

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responsibility and a duty are in the shoulders of the driver, who is the second respondent herein, to take the vehicle and that too, in a public place, it was not done by him, and a thorough failure is noticed. In such circumstances, this Court is of the opinion that the order of the Labour Court has got to be set aside and the order of termination of service by the Enquiry Officer be restored. Accordingly, it is set aside, and this writ petition is ordered. No costs. Consequently, connected MPs are closed.

nsv/

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Presiding Officer
I Additional Labour Court
Chennai
+ One CC to Mr. G. Munirathnam, Advocate SR 60220
+ One cc to Mr. S. Ravi Advocate sR 59824
GGK (co)
sg 10/10/07

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